

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

MICHAEL SMITH
PETITIONER
(Full name of Petitioner)

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CURRENT PLACE OF CONFINEMENT

vs.

1873307

PRISONER ID NUMBER

LORI DAVIS, DIRECTOR,

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

7:16-CV-086-O
CASE NUMBER
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

- ☒ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)
probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: _____ (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: 78TH DISTRICT COURT,
WICHITA COUNTY, TEXAS
2. Date of judgment of conviction: JUNE 7, 2013
3. Length of sentence: 18 YEARS CONFINEMENT
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 52-047-B

5. What was your plea? (Check one) ☐ Not Guilty ☒ Guilty ☐ Nolo Contendere
6. Kind of trial: (Check one) ☐ Jury ☒ Judge Only
7. Did you testify at trial? ☒ Yes ☐ No
8. Did you appeal the judgment of conviction? ☒ Yes ☐ No
9. If you did appeal, in what appellate court did you file your direct appeal? COURT OF APPEALS,
2ND JUDICIAL DISTRICT Cause Number (if known): 02-13-00319-CR

What was the result of your direct appeal (affirmed, modified or reversed)? AFFIRMED

What was the date of that decision? APRIL 9, 2015

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: _____

Result: _____

Date of result: _____ Cause Number (if known): _____

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:

Result: _____

Date of result: _____

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: Court of Criminal Appeals

Nature of proceeding: 11:07 WRIT OF HABEAS CORPUS

Cause number (if known): WR 85,096-01

Case 7:16-cv-00086-O Document 1 Filed 07/11/16 Page 4 of 13 PageID 4
Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: April 11, 2016

Grounds raised: INEFFECTIVE ASST. COUNSEL AT PRETRIAL AND PLEA BARGAINING, INVALID PLEA, BREACH OF CONTRACT AND DUE PROCESS VIOLATION, ACTUAL INNOCENCE/ABUSE OF DISCRETION,

Date of final decision: JUNE 1, 2016

What was the decision? DENIED WITHOUT WRITTEN ORDER

Name of court that issued the final decision: COURT OF CRIMINAL APPEALS

As to any second petition, application or motion, give the same information:

Name of court: N/A

Nature of proceeding: _____

Cause number (if known): _____

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: _____

Grounds raised: _____

Date of final decision: _____

What was the decision? _____

Name of court that issued the final decision: _____

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☒ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: _____

(b) Give the date and length of the sentence to be served in the future: _____

Parole Revocation:

13. Date and location of your parole revocation: _____
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?
☐ Yes ☐ No
16. Are you eligible for release on mandatory supervision? ☐ Yes ☐ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

Disciplinary case number: _____

What was the nature of the disciplinary charge against you? _____

18. Date you were found guilty of the disciplinary violation: _____

Did you lose previously earned good-time days? ☐ Yes ☐ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?
☐ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: _____

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** DUE PROCESS VIOLATION /CONFRONTATION CLAUSE VIOLATIONS

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE HABEAS CORPUS PROCESS IN THE STATE OF TEXAS VIOLATED MY RIGHTS TO DUE
PROCESS BY FAILING OT PROVIDE AN ADEQUATE FORUM TO DEVELOP MY CLAIMS OF
INEFFECTIVE ASSISTANCE OF COUNSEL AT PLEA ABRGAINING.BY DENYING ANY MEANINGFUL
EVIDENTIARY HEARING PROCESS,HABEAS CLAIMS CANNOT BE DEVELOPED.

- B. **GROUND TWO:** INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

DEFENSE COUNSEL MADE NUMEROUS MOTIONS TO WITHDRAW.HE WAS UNPREPARED TO PROCEED
TO TRIAL.COUNSEL FAILED TO INVESTIGATE THE FACTS OF THE CASE ,OR THE LAW THAT
WAS APPLICABLE.COUNSEL FAILED TO INFORM PETITIONER THAT IF HE ENTERED INTO
A SPLIT-PLEA AGREEMENT,HE WOULD ESSENTIALLY FORFEIT HIS CONSTITUTIONAL RIGHTS
BY ALLOWING THE STATE TO PROVE A BREACH OF THE AGREEMENT BY A LESSER STANDARD
OF PROOF AND WOULD ALLOW THE PROSECUTION TO OBTAIN A HARSHER SENTENCE WITHOUT
HAVING TO MEET A GUILT BEYOND A REASONABLE DOUBT STANDARD OF ANY ALLEGED
SUBSEQUENT CRIME.

C. **GROUND THREE:** INVALID PLEA.BREACH OF CONTRACT AND DUE PROCESS VIOLATION

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
THE TRIAL COURT WAS STAUTORIALY PROHIBITED FROM SENTENCING THE PETITIONER TO THE LESSER TERM OFFERED IN THE PLEA AGREEMENT ONCE HE PLEAD TRUE TO THE ENHANCEMENT PARAGRAPHS.THE PLEA AGREEMNT FAIELD TO NOTIFY THE PETITIONER THAT HE WOULD BE RELINQUISHING HIS RIGHT TO A TRIAL BY JURY,PRIOR TO ANY ALLEGED SUBSEQUENT OFFENSE BEING ALLOWED TO BE USED TO ENFORCE THE HARSHER SENTENCE REPRESENTED IN THE SPLIT-PLEA AGREEMENT.ALTERNATIEVLY,PETITIONER WAS NOT GIVEN ADEQUATE NOTICE THAT THE STANDARD OF PROFF TO OBTAIN THE HARSHER CONVICTION AND SENTENCE WOULD BE LWOER THAN GUILT BEYOND A REASONABLE DOUBT.THE STATE BREACHED THE AGREEMNT BY FAILING TO PROVE EVEN BY A PREPONDERANCE OF THE EVIDENCE STATNDARD THAT PETITIONER BREACEHD THE AGREEMENT BY COMMITTING A SUSBEQUENT OFFENSE.

D. **GROUND FOUR:** ACTUAL INNOCENCE ,ABUSE OF DISCRETION

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
THE STATE ALLEGED THAT PETITIONER WAS IN POSSESSION OF NARCOTICS AND VIOLATED THE TERMS OF HIS SPLIT-PLEA AGREEMENT.THE EVIDENCE BEFORE THE TRIAL COURT DID NOT SUPPORT SUCH A FINDING OF GUILT.MICHELLE REEVES TESTIFIED THAT THE PETITIONER HAD NO KNOWLEDGE THAT SHE HAD NARCOTICS ON HER PERSON.NO OTHER TESTIMONY OR EVIDENCE BEFORE THE COURT PLACED NARCOTICS IN THE PETITIONER'S POSSESSION . THE TRIAL COURT FOUND AS IT'S OPINION THAT THE NARCOTICS FOUND ON MICHELLE REEVES AT THE TIME OF HER ARREST,BELONGED TO THE PETITIONER,DESPITE HAVING NO EVIDENCE BEFORE IT TO SUPPORT SUCH A FINDING.

21. Relief sought in this petition: CONVICTION SET-ASIDE AND REMAND FOR NEW TRIAL,

ALTERNATIVELY A FINDING THAT THE STATE BREACHED THE PLEA AGREEMNT AND MUST HONOR THE TERMS AND RESENTENCE PETITIOENR TO THE LESSER TERM. A FINDING THAT THE STATE OF TEXAS'S HABEAS CORPUS PROCEDURES VIOLATE INDIVIDUALS DUE PROCESS RIGHTS WHEN THEY FAIL TO HOLD A LIVE EVIDENTIARY HEARING,APPOINT COUNSEL AND ALLOW A PRISONER AN OPPORTUNITY TO DEVELOP HIS CLAIMS.

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.
-
-

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?
☐ Yes ☐ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. _____

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: J. Bruce Harris, 1401 Holiday, Ste 206, Wichita Falls, Tx 76301
(b) At arraignment and plea: J. Bruce Harris, 1401 Holiday, Ste 206 Wichita Falls, Tx 76301
(c) At trial: J. Bruce Harris, 1401 Holiday, Ste 206, Wichita Falls, Tx 76301
(d) At sentencing: Mark Barber, 1101 Scott Ave, Ste 15, Wichita Falls, Tx 76301
(e) On appeal: Mark Barber, 1101 Scott Ave, Ste 15, Wichita Falls, Tx 76301
(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.¹

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

July 5th 2016 (month, day, year).

Executed (signed) on July 5th 2016 (date).

Michael O. Smith
Signature of Petitioner (required)

Petitioner's current address: Michael Smith, #1873307, Michaels Unit, 2664 FM 2054, Tennessee
Colony, Texas, 75886

July 4, 2016

Michael Smith #1873307
Michaels Unit
2664 FM 2054
Tennessee Colony, TX 75886

RE: INITIAL FILING WRIT

Dear Clerk,

Please find enclosed an original petition for writ of habeas corpus. I am aware that the filing requires payment of a \$5.00 filing fee. My family will be contacting you within a day or two of receipt of this filing to pay the fee .

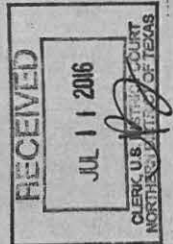
I appreciate your cooperation in this matter, and will await confirmation of filing from you.

Sincerely,

Michael D. Smith

Michael Smith

Michael. O. Smith #1873307
Michael Unit
2464 F.M. 2054
Tennessee Colony, Texas
75886



United States District Court
Clerk,
Northern District of Texas
1000 Lamar Street, Suite 203
Wichita Falls, Texas 76301



PRIVILEGED OFFENSE
NOT INSPECTED
DEPARTMENT OF CRIMINAL
JUSTICE - CORRECTIONAL
INSTITUTIONS DIVISION